

## SUBCOMMITTEE NO. 4

## Agenda

Michael J. Machado, Chair  
Dick Ackerman  
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Thursday, April 10, 2008  
10:00 a.m. or Upon Adjournment of Session  
Room 112

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### State Administration—General Government—Judiciary—Transportation

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

## 8550 California Horse Racing Board

**Background.** The California Horse Racing Board (CHRB) licenses racing industry participants, enforces racing rules related to drugs and other offenses, administers efforts to protect racing horses, and oversees programs to improve the health of jockeys and other industry employees. The CHRB regulates operations at 14 racetracks, 20 simulcast facilities, and advance deposit wagering services (available via telephone or on-line).

**Governor's Budget.** The Governor's budget proposal includes \$11.5 million to support the CHRB in 2008-09. This is about 4.5 percent more than is estimated for expenditure in the current year due to a proposal to augment the rates paid to stewards and veterinarians, employee compensation adjustments, and a price increase.

Excess revenues from unclaimed pari-mutuel tickets (Racetrack Security Fund, also called the Special Deposit Fund) are transferred to the General Fund. The Governor's Budget estimates that \$400,000 will be available for transfer to the General Fund, which is \$100,000 more than is estimated for transfer in the current year.

<b>Summary of Expenditures</b>				
(dollars in thousands)	2007-08	2008-09	\$ Change	% Change
<b>Type of Expenditure</b>				
California Horse Racing Board	\$11,050	\$11,546	\$496	4.5
Administration	8,937	9,340	403	4.5
<i>less distributed Administration</i>	<i>-8,937</i>	<i>-9,340</i>	<i>-403</i>	<i>0.0</i>
Subtotal	\$11,050	\$11,546	\$496	4.5
<b>Funding Source</b>				
Special Funds	\$9,519	\$10,131	\$612	6.4
<i>Budget Total</i>	<i>9,519</i>	<i>10,131</i>	<i>612</i>	<i>6.4</i>
Special Deposit Fund	1,531	1,415	-116	-7.6
Subtotal	\$11,050	\$11,546	\$496	4.5

### 1. Steward and Veterinarian Contract Increases

**Background.** The California Horse Racing Board (CHRB) contracts with professional stewards and licensed veterinarians to ensure the safety and integrity of on-track racing. Official state veterinarians supervise all veterinary phases of racing operations at the horse racing meetings. The Boards of Stewards supervise all phases of racing operations at the horse racing meetings and hold administrative hearings to conduct fact-finding and adjudicate CHRB rules and regulations.

**Governor's Budget.** The Governor's budget proposal includes \$430,000 from the Fair and Exposition Fund to support a pay increase for contracted stewards and veterinarians. This level of funding would support an average pay increase of 19 percent to 25 percent for the stewards and veterinarians. This funding would also be used to support an additional contract assistant steward in southern racing arenas to liaise between the stewards' stand and the backstretch.

**No Rate Increases Given Recently.** The board indicates that the stewards and veterinarians have received the same daily rates since 1999-00. Currently stewards and veterinarians are paid approximately \$420 and \$400 per day, respectively. The price increase proposed by the Governor would increase this rate to \$500 per day, which would result in contract payments of approximately \$100,000 annually (assuming 200 racing days a year). The board indicates that it needs this rate increase to ensure that it can continue to recruit qualified stewards and veterinarians.

**Additional Steward Piloted.** The board indicates that it piloted the use of an assistant steward at the Del Mar Thoroughbred Club meeting in the current year. This assistant steward was used as a liaison between the stewards' stand and the backstretch and was responsible for identifying three instances of inappropriate race day treatments that disqualified horses from racing. The board would like to make this position permanent for the southern racing arenas.

**Fair and Exposition Fund.** The Fair and Exposition Fund currently has a structural deficit, that is annual expenditures from the fund are projected to exceed annual expenditures from the fund by about \$700,000 in the budget year.

The board has indicated that two pieces of legislation passed in 2007 may enhance revenues to the Fair and Exposition Fund. Chapter 594, Statutes of 2007 (AB 241, Price) authorizes fairs to operate up to 45 new mini-satellite wagering facilities on leased premises within the boundaries of the fair. This expansion in satellite wagering could generate additional revenues for the Fair and Exposition Fund. The board estimates that revenues could increase by \$3.6 million annually from this legislation. The Legislature also enacted Chapter 613, Statutes of 2007 (AB 765, Evans) which authorizes a fair, or an association conducting racing at a fair, to deduct an additional 1 percent from its handle to be used for maintenance and improvements at a fair's racetrack enclosure. Analyses by the legislature indicated that this new law could generate \$1.5 million in additional revenues for racetrack improvements, which could reduce reliance on the Fair and Exposition Fund. Nevertheless, the Governor's budget does not reflect an increase in revenues due to this legislation.

**Staff Comments.** Staff finds that the Governor's budget includes \$160,000 to fund a general price increase for the board. Staff finds that this price increase could help provide for a marginal increase in the contracted rates paid to stewards and veterinarians. Furthermore, the board has not presented information to the staff that it is currently having problems recruiting stewards and veterinarians at the current contract rate. Furthermore, there is currently not enough revenue in the Fair and Exposition Fund to support this augmentation in the future.

**Staff Recommendation.** Staff recommends that the Subcommittee:

- Reject the budget proposal.

## 1870 California Victim Compensation and Government Claims Board

**Background.** The California Victim Compensation and Government Claims Board's (VCGCB) primary functions are to compensate victims of violent crime and consider and settle civil claims against the state. The Board consists of three members: the Director of General Services who serves as the chair, the State Controller, and a public member appointed by the Governor.

The board also determines equitable travel allowances for certain government officials, responds to protests against the state alleging improper or unfair acts in the procurement process, and provides reimbursement of counties' special election expenses.

**Governor's Budget.** The Governor's budget includes \$167.5 million to support the VCGCB's activities. This is a slight decrease from estimated expenditures in 2007-08 due to one-time payments to reimburse local governments for special elections in the current year.

<b>Summary of Expenditures</b>				
(dollars in thousands)	2007-08	2008-09	\$ Change	% Change
<b>Type of Expenditure</b>				
Citizens Indemnification	\$156,954	\$156,802	-\$152	-0.1
Quality Assurance and Rev Recovery Div	9,570	9,332	-238	-2.5
Civil Claims Against the State	1,344	1,373	29	2.2
Citizens Benefiting the Public Administration	20	20	0	0.0
less distributed Administration	9,448	9,688	240	2.5
Executive Office Administration	-9,973	-10,223	-250	0.0
Counties' Special Election Reimb	525	535	10	1.9
	2,643	-	-	-
<b>Total</b>	<b>\$170,531</b>	<b>\$167,527</b>	<b>-\$3,004</b>	<b>-1.8</b>
<b>Funding Source</b>				
General Fund	\$2,643	-	-	-
Restitution Fund	134,357	133,967	-390	-0.3
Budget Total	137,000	133,967	-3,033	-2.2
Federal Trust Fund	32,187	32,187	0	0.0
Reimbursements	1,344	1,373	29	2.2
<b>Total</b>	<b>\$170,531</b>	<b>\$167,527</b>	<b>-\$3,004</b>	<b>-1.8</b>

## 1. Restitution Fund

**Background.** A defendant found guilty of a criminal offense is usually ordered by the court to pay various fines and penalties. The money collected is divided in accordance with state law as determined by a judge, among various recipients, and sometimes includes direct payments of restitution to the victim of the crime. In addition, both state and local government agencies finance a number of programs from the fine and penalty money that they receive. A portion of the money collected from defendants is deposited in the Restitution Fund, which was established to compensate those injured by crime.

The Restitution Fund is the primary source of funding for the Victims Compensation Program (VCP). These monies are continuously appropriated, which means they are not subject to appropriation by the Legislature in the annual Budget Act. The Restitution Fund revenues are used as a match to draw down federal funds under the Victims of Crime Act (VOCA) grant program. The VCP receives 60 cents in federal VOCA grant funding for each dollar spent to provide victims with services.

In addition to the VCP, the Restitution Fund has more recently supported the following new initiatives:

- **Office of Emergency Services:** (1) \$9.5 million for the California Gang Reduction, Intervention, and Prevention (CalGRIP) initiative that provides grants to local entities; (2) \$1 million to support four Internet Crimes Against Children taskforces in San Diego, Sacramento, San Jose and Los Angeles.
- **Department of Justice:** (1) \$6.7 million for the California Witness Protection Program.

**Governor's Budget.** The Governor's budget proposal projects \$123 million in revenues and \$151 million in expenditures to and from the Restitution Fund in 2008-09. This is similar to the level of revenues and expenditures estimated from the Restitution Fund in the current year.

**LAO Finds Budget Overstates Expenditures and Understates Revenues from Restitution Fund.** The LAO finds that the Governor's budget overstates expenditures from the Restitution Fund and understates revenues to the Restitution Fund in the current year and budget year. The board and DOF concur that expenditures from the Restitution Fund are overstated in the Governor's budget. The department estimates that expenditures have been overstated by over \$25 million each year starting in 2006-07. If the expenditures are revised as per the recommendations by the LAO and DOF, the fund will end the budget year with a reserve of \$124 million.

The LAO also finds that revenues are likely to be understated. If revenues are understated, this could increase the reserve balance by another \$18 million to a total of \$142 million at the end of the budget year.

**LAO Finds Increased Victim Claims and Support for Other Programs May Leave Fund Short in the Future.** The LAO finds that the Restitution Fund may face a shortfall in the next five years if changes are not made to help move the Restitution Fund towards long-term solvency. The LAO identifies that the main source of the problem is the likelihood that expenditures will grow faster than the relatively stable revenues flowing into the fund. The

increased expenditures are due to (1) increased awareness of the services provided by the board, (2) various rate increases to the board's service providers (medical providers are now reimbursed at Medicare plus 20 percent, mental health providers are paid \$90 to \$130 per hour), and (3) increased use of the Restitution Fund in recent years to support other new state programs.

**State Missing Federal Matching Opportunity.** The VCP receives 60 cents in federal VOCA grant funding for each dollar spent to provide victims with services. The LAO finds that this is not the case for Department of Justice (DOJ) and Office of Emergency Services (OES) expenditures from the Restitution Fund. The LAO estimates that the \$17 million spent on these projects potentially reduces the federal grant revenue the fund would otherwise receive if the money was actually spent on qualifying services for victims by as much as \$10 million annually.

The LAO has identified that one of the purposes of the Witness Protection Program administered by DOJ is to assist crime victims, as witnesses are often crime victims themselves. Therefore, the LAO has identified that some of the Restitution Fund expenditures in support of the Witness Protection Program may qualify for federal matching funds under the VOCA program if the program was administered by the Board and not DOJ.

**Other LAO Options for Moving the Restitution Fund Towards Long-Term Solvency.** The LAO has also identified other options for moving the Restitution Fund towards long-term solvency. One of the options is to increase the local match required for the Witness Protection Program currently administered by DOJ. State law currently requires a 25 percent local match for local agencies that apply for reimbursement from the state for witness protection expenditures.

The LAO also recommends that the Legislature evaluate the other programs supported by the Restitution Fund and determine whether they should be supported over the long-term by the Restitution Fund. Finally, the LAO recommends that the Legislature also evaluate the higher rates paid to providers of victim compensation services to determine if these rates can be sustained over the long-term.

**LAO Budget Option.** As mentioned above, the LAO estimates that the Restitution Fund will become insolvent in the next five years if actions are not taken to reduce expenditures and/or increase expenditures to the fund. Nevertheless, the LAO recommends that the Legislature consider, as an option, a transfer of as much as \$45 million from the Restitution Fund to the General Fund as a one-time budget solution. The LAO finds that the Restitution Fund will face insolvency whether or not a portion of the fund's balance is transferred to the General Fund.

**Restitution Fund Bailed Out in 1993-94.** Staff finds that the Restitution Fund was bailed out by the General Fund in 1993-94. The Governor and the Legislature agreed to appropriate \$44 million from the General Fund to eliminate a backlog of approved claims. The next year statute was enacted to impose a new diversion restitution fee to be charged to any person charged with a felony or misdemeanor whose case was diverted by the court. This statute change was estimated to generate \$20 million in additional revenues annually and helped to make the fund solvent.

**LAO Finds Restitution Collection Could Be Improved.** The LAO finds that it is possible to improve the solvency of the Restitution Fund by increasing the collection of some of the revenues that flow into the fund from the collection of restitution orders. The LAO has recommended that the Legislature evaluate several alternatives for improving the collection of restitution. These alternatives include the following:

- Impose additional financial asset disclosure requirements on criminal defendants.
- Increase county financial incentives (currently 10 percent of what is collected) for participation in collection efforts.
- Model restitution collection efforts on those used in the collection of child support.
- Extend the ability of state and local agencies to continue collection efforts after a defendant has been released on parole or from probation.
- Improve recordkeeping on the amount owed by defendants that is accessible to state and local officials involved in collection efforts.
- Encourage superior court judges to garnish the wages of individuals who are behind in restitution payments.
- Require defendants to appear before a judge if they fail to pay restitution as is currently done in Alameda and Santa Clara Counties.

The LAO recommends that the Legislature request an audit to explore the feasibility of pursuing one or more of the alternatives listed above to improve the state's collection of restitution payments. An audit of the VCGCB was recently approved by the Joint Legislative Audit Committee. However, the audit did not include in its scope, efforts to improve restitution recovery.

**Staff Comments.** Staff finds that the Restitution Fund has a significant reserve and a one-time transfer to the General Fund would not have a significant impact on the long-term solvency of the Restitution Fund if other changes are not made to reduce expenditures or increase revenues to the fund.

**Staff Recommendation.** Staff recommends that the Subcommittee:

- Request that staff, with input from the LAO, DOF, and the board, consider options for transferring a portion of the reserves in the Restitution Fund to the General Fund on a one-time basis.
- Approve trailer bill language and budget changes to transfer the administration of the Witness Protection Program from DOJ to the VCGCB and require that the board structure the program to maximize federal matching funds.
- Reduce Restitution Fund support by \$3 million to its 06-07 funding level and increase federal fund \$1.8 million support by a like amount for the Witness Protection Program. Approve trailer bill language to increase the local matching requirement from 25 percent to 75 percent to help address structural deficit in the Restitution Fund.
- Request that staff, LAO, DOF, and the board develop an audit request to explore options for enhancing revenue collections to the Restitution Fund.

## 2. Administrative Costs

**Background.** The VCGCB does not separately track the administrative costs of the VCP and the Government Claims Program. In addition, administrative expenditures and direct payments to crime victims are also commingled in the same budget item, which makes it extremely difficult to track the efficiency of the current VCP.

**Governor's Budget.** It is not possible to identify total administration costs with complete accuracy. The Governor's budget labels \$10.2 million as administrative expenditures for the budget year. However, the expenditures labeled as administrative expenditures are not representative of all of the administrative expenditures of the board.

**LAO Finds VCP Administrative Expenditures Relatively High.** The LAO has estimated that administrative costs for the VCP were about \$39 million or 31 percent of the state and federal funding it receives annually for the program. The LAO found that this level of administrative costs was relatively high when compared with other states that had administrative costs that ranged from 5 percent to 32 percent. The LAO does note that victim compensation programs vary widely among states; thereby what constitutes administrative costs can also vary significantly across different states. Furthermore, the board indicates that it engages in many state functions that are not direct services to victims, but are also not strictly administrative functions. For example, the board engages in the development of educational materials and the ongoing development of local victim service providers.

The board has also indicated that it is taking steps to reduce administrative costs and improve the effectiveness of its programs. For example, the board recently completed its transition to an Internet-based system for processing claims. The board also intends to reorganize the manner in which it assigns employees to process claims, which should improve the efficiency of the board.

The LAO recommends that the Legislature direct the Administration to establish separate budget items and displays in the Governor's budget for the administrative costs of the VCP and Government Claims Board. The LAO recommends supplemental report language to direct this change. The Administration concurs with this recommendation and has agreed to make these changes in the next budget.

**Audit of VCP Approved.** On March 12, 2008, the Joint Legislative Audit Committee (JLAC) approved an audit of the VCGCB that was submitted by Assembly Member Leno and Senator Calderon. The audit will focus on the expenditures made out of the Restitution Fund, including an analysis of the VCP administrative expenditures. The audit will also focus on the board's current process for outreach to victims of violent crime and review the application and approval process of the board. The LAO has also recommended that an audit be conducted to determine the relative efficiency of the board's processing of victim claims. Staff finds that this audit should address the administrative issues raised by the LAO.

In addition, staff finds that during 2007 budget deliberations this Subcommittee inquired about alternative ways the board was outreaching to victims, especially vulnerable populations like the homeless. At that time, the board indicated that it was working on a report to assess the cost of replicating the Trauma Recovery Center pilot that had been conducted at San Francisco General



Hospital. This report was requested by the Governor in his signing message of Chapter 884, Statutes of 2006 (AB 50, Leno). This report was never received by the Subcommittee and it is unclear to staff whether this report was ever completed. Staff finds that the JLAC audit will focus specifically on the board's outreach efforts and how it currently targets its efforts to reach the most vulnerable populations in the state.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve supplemental report language regarding a new budget display for the board that includes administrative costs.

## 8120 Commission of Peace Officer Standards and Training

**Background.** The Commission on Peace Officer Standards and Training (POST) is responsible for raising the competency levels of law enforcement officers in California by establishing minimum selection and training standards, improving management practices, and providing financial assistance to local agencies relating to the training of law enforcement officers.

**Governor's Budget.** The Governor's budget proposal includes \$63.6 million from special funds to support POST in the budget year. This is about the same level of funding that is estimated for expenditure in the current year.

<b>Summary of Expenditures</b>				
(dollars in thousands)	2007-08	2008-09	\$ Change	% Change
<b>Type of Expenditure</b>				
Standards	\$5,557	\$5,675	\$118	2.1
Training	36,015	35,952	-63	-0.2
Peace Officer Training	21,944	21,944	0	0.0
Administration	6,334	6,484	150	2.4
<i>less distributed Administration</i>	<i>-6,334</i>	<i>-6,484</i>	<i>-150</i>	<i>0.0</i>
<b>Total</b>	<b>\$63,516</b>	<b>\$63,571</b>	<b>\$55</b>	<b>0.1</b>
<b>Funding Source</b>				
Peace Officers' Training Fund	61,757	60,312	-1,445	-2.3
Antiterrorism Fund	500	2,000	1,500	300.0
<i>Budget Total</i>	<i>62,257</i>	<i>62,312</i>	<i>55</i>	<i>0.1</i>
Reimbursements	1,259	1,259	0	0.0
<b>Total</b>	<b>\$63,516</b>	<b>\$63,571</b>	<b>\$55</b>	<b>0.1</b>

### 1. Anti-Terrorism Training—Informational Item

**Background.** Recent legislation (Chapter 392, Statutes of 2007 [AB 587, Kernet]) appropriated \$5 million from the new Anti-terrorism Fund to develop anti-terrorism training courses and to reimburse local public safety agencies for anti-terrorism training activities. Approximately \$2.5 million was allocated to the Office of Emergency Services for the California Fire Fighter Joint Apprenticeship Program. The other \$2.5 million was allocated to POST to

develop anti-terrorism training courses and reimburse local law enforcement agencies that employ peace officers that participate in the training program.

The Anti-Terrorism Fund was created by Chapter 38, Statutes of 2002 (AB 1759, Wesson) and is supported by the sale of Memorial license plates honoring the victims of the September 11, 2001 terrorist attacks.

**Governor's Budget.** The Governor's budget assumes that \$2 million from the Anti-terrorism Fund will be expended in the budget year. These funds were appropriated in legislation (AB 587, Karnette) passed last year so there is no budget change proposal accompanying this budget change.

## 2. Peace Officers' Training Fund

**Background.** The Commission's main funding source is the Peace Officers' Training Fund. The main revenues supporting this fund are state penalties and fines. Current law allocates a portion of the penalties and fines collected by the state directly to the Peace Officers' Training Fund. In addition, the budget Control Section 24.10 also allocates a portion of the fines and penalties deposited in the Driver Training Penalty Assessment Fund to the Peace Officer's Training Fund. If statute did not dictate how these fines and penalties were directed these revenues would be deposited in the General Fund.

**Governor's Budget.** The Governor's budget projects that revenues to the Peace Officers' Training Fund will be \$56.6 million in the budget year. The Governor's budget also includes Control Section 24.10 that proposes to allocate \$14 million from the Driver Training Penalty Assessment Fund to the Peace Officers' Training Fund in the budget year. The Peace Officers' Training Fund is projected to end the budget year with a reserve of \$22 million.

**Staff Comments.** Staff finds that the Governor did not propose a 10 percent reduction to the budget for the Commission even though support for the Commission is from revenues that can be transferred to the General Fund. Staff finds that a 10 percent reduction to the Commission's budget would require the Commission to reduce training offerings and reimbursements to local governments in the budget year.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Amend Control Section 24.10 to reduce the allocation of Driver Training Penalty Assessment Fund revenues to the Peace Officers' Training Fund by \$6 million. This will approximate a 10 percent reduction for the Commission and will increase General Fund revenues accordingly.

## 0552 Office of the Inspector General

**Background.** The Office of the Inspector General (OIG) oversees the state's correctional system through audits, special reviews, and investigations of the California Department of Corrections and Rehabilitation (CDCR). The Office is also charged with evaluating the qualifications of candidates being considered by the Governor for appointment to warden of a correctional facility or superintendent of a juvenile facility. The Office also monitors internal affairs investigations conducted by CDCR to ensure they are performed in a timely and professional manner.

**Governor's Budget.** The Governor's budget proposal includes \$23.9 million General Fund to support the OIG in the budget year. This is a 25 percent increase over estimated expenditures in the current year. This increase is primarily due to an augmentation to fully fund the OIG's audits and investigation workload and to implement new monitoring programs directed by court monitors in CDCR lawsuits.

<b>Summary of Expenditures</b> (dollars in thousands)				
	2007-08	2008-09	\$ Change	% Change
<b>Type of Expenditure</b>				
State Operations	\$19,170	\$25,552	\$6,382	33.3
Total	\$19,170	\$25,552	\$6,382	33.3
<b>Funding Source</b>				
General Fund	\$19,170	\$25,552	\$6,382	33.3
<i>Budget Total</i>	<i>19,170</i>	<i>25,552</i>	<i>6,382</i>	<i>33.3</i>
Total	\$19,170	\$25,552	\$6,382	33.3
Budget Balancing Reduction	0	-1,672	-1,672	0.0
Total	\$19,170	\$23,880	\$4,710	24.6

### 1. Bureau of Audits and Investigations and General Administration

**Budget Balancing Reductions.** The Governor is proposing a 10 percent reduction to OIG's budget. The OIG is planning to reduce its Bureau of Audits and Investigations by \$1.5 million and its Executive Administration by \$202,000. The reduction to the Bureau of Audits and Investigations would reduce the OIG's audit capacity as follows:

- Reduce the audit cycle from every four years to every five years for audits of the adult and juvenile institutions and warden and superintendents.

- Reduce Special Review reports from 14 to 13 per year.
- Reduce follow-up audits of Management Review audits by 25 percent.
- Reduce number of warden candidates that can be vetted annually from 12 to 10 and reduce number of superintendent candidates that can be vetted annually from 10 to 8.
- Perform one less large-scale investigation and one less fraud investigation per year.

In addition, the OIG estimates that it will reduce the amount of complaints it can process annually by about 11 percent. The Governor has proposed trailer bill language to implement this reduced audit schedule.

The OIG reports that the impacts of the reduction to the Executive Administration will result in delays in various human resource processes and a general reduction in the OIG's ability to support its staff administratively.

**Governor's Budget.** The Governor's budget also includes several budget proposals to augment the OIG's budget. These proposals include a total of \$6.4 million from the General Fund, which includes \$1.8 million for court-driven expenditures (see description below). The remaining budget augmentations are to the Bureau of Audits and Investigations (\$3.8 million) and general administration (\$690,000).

The augmentation to the Bureau of Audits and Investigations is based on a workload analysis that finds that its current staffing resources are short approximately 20 positions to implement all of its statutorily mandated work. The augmentation for general administration would support six positions to support ongoing administrative and information technology functions that have suffered from under-investment as the office has grown over the past decade.

These budget augmentations, taken together with the budget balancing reductions, provide the Bureau of Audits and Investigations with an additional \$2.3 million General Fund in the budget year. General administration would be augmented by \$488,000 General Fund.

**LAO Recommendation.** The LAO reports that the OIG is currently performing most of its mandated work audits and investigations work within its existing resources. Furthermore, the LAO reports that the OIG has provided little evidence that the OIG has been unable to complete its work at its current administrative and information technology staffing levels. Therefore, the LAO recommends denying the augmentations proposed for the Bureau of Audits and Investigations and general administration.

Furthermore, the LAO also recommends that the Legislature adopt the budget balancing reductions. If the budget proposals are rejected and the budget balancing reduction is adopted this will result in a real reduction to the OIG's budget of \$1.5 million and \$202,000 in the Bureau of Audits and Investigations and general administration, respectively. The LAO's analysis finds that the OIG could sustain this level of reductions with relatively minimal impact on operations because of existing vacancies in its Bureau of Audits and Investigations. Furthermore, given the state's fiscal condition, the LAO believes that the modest reduction to the OIG's administration resources is also warranted.

**Staff Comments.** Staff finds that the proposed reductions to the OIG's audit functions do reduce its overall audit oversight by reducing the frequency in which audits are performed. Nevertheless, given the significant structural deficit the state is facing and the expanded duties the OIG is being directed to implement by the courts, the budget balancing reductions proposed by the Governor appear to have the least impact on the OIG's oversight responsibilities.

Staff finds that the augmentation proposed for the Bureau of Audits and Investigations is justified on a workload basis. Evidence does suggest that the OIG is completing most of its mandated workload. Nevertheless, the OIG has indicated to staff that this level of work is not sustainable over the long-term and could have impacts on the ability of OIG to retain staff.

Staff finds that OIG's staffing has increased significantly over the past several years. This increase has put increased strain on its administrative resources including information technology. Furthermore, the OIG reports that the current low ratio of administrative staff reduces productivity of the inspectors general because they have to spend considerable time on administrative tasks. Nevertheless, staff concurs with the LAO that a workload analysis has not been submitted to justify the additional positions.

**Staff Recommendations.** Staff recommends that the Subcommittee take the following actions:

- Approve half of the proposed augmentation for the Bureau of Audits and Investigations and approve the budget balancing reduction to this item, which would result in a \$400,000 augmentation to the OIG's budget.
- Reject the proposed augmentation for general administration and reject the budget balancing reduction to this item, which would result in no net change to the OIG's administrative resources.
- Approve trailer bill language to implement the budget balancing reductions for the Bureau of Audits and Investigations.

These actions would result in \$2.4 million in additional savings as compared to the Governor's budget.

## 2. New Court-Ordered Functions

**Background.** It is well known that CDCR has faced increased scrutiny from the federal courts over the past decade for various violations of the U.S. Constitution, including the Eighth Amendment (prohibition of cruel and unusual punishment) and the Fourteenth Amendment (right to due process and equal protection). Two of the class action lawsuits that have been brought against the state included the *Madrid* case that alleged CDCR condoned a pattern and practice of using excessive force against inmates and the *Plata* case that alleged that inmates were denied constitutionally adequate health care. In both cases the federal courts found evidence to support the alleged claims and appointed a Special Master and a Receiver, respectively, to develop and implement a plan to remedy the violations of the U.S. Constitution.

Under the *Madrid* case, CDCR has faced continued scrutiny from the federal court for failing to regularly and adequately review use-of-force incidents and for not imposing adequate disciplinary action when allegations of excessive force are proven. In January 2005 the Bureau

of Independent Review was created within the OIG to oversee CDCR's process for addressing use-of-force incidents. In May 2007 revised protocols were adopted to require OIG special assistant inspectors general to attend CDCR use-of-force committee meetings on a regular basis at each adult institution.

Under the *Plata* case, CDCR has agreed to implement a medical investigation pilot project. As part of this project, the CDCR Office of Internal Affairs (OIA) is establishing a Medical Investigations Unit to perform expedited investigations of misconduct by CDCR health care staff. In addition, the CDCR Employment Advocacy and Prosecution Team (EAPT) is establishing a Medical Prosecution Unit to perform expedited disciplinary actions if warranted. The Receiver has furthermore requested that the OIG conduct independent oversight of the new OIA and EAPT similar to the way it is currently reviewing CDCR's process for addressing use-of-force incidents.

**Governor's Budget.** The Governor's budget includes two budget proposals to address increased workload driven by the federal courts. These budget proposals include the following:

- **Madrid** – \$890,000 General Fund (\$784,000 one-time) to establish four new positions to ensure regular attendance at as many use-of-force committee meetings as possible, but no less than monthly at each adult institution.
- **Plata** - \$878,000 General Fund to establish five new positions to implement a new pilot project to monitor CDCR's investigatory and disciplinary processes of CDCR health care staff.

**LAO Recommendation.** The LAO recommends approving the two budget proposals related to compliance with the *Madrid* and *Plata* cases, respectively.

**Staff Recommendation.** Staff recommends that the Subcommittee approve both the budget proposals related to the *Madrid* and *Plata* cases.

## 0820 Department of Justice

**Background.** The Department of Justice (DOJ) is under the direction of the Attorney General. The Attorney General is elected by the public and is required by the California Constitution, as the chief law officer of the state, to ensure that California's laws are uniformly and adequately enforced. The DOJ also serves as the state's primary legal representative and provides various services to assist local law enforcement agencies. The DOJ is organized into the following seven programmatic functions:

- **Civil Law**—Represents the state in civil matters and is organized in the following sections: Business and Tax; Correctional Law; Employment, Regulation and Administration; Government Law; Health, Education and Welfare; Health Quality Enforcement; Licensing; and Tort and Condemnation.
- **Criminal Law**—Represents the state in all criminal matters before the Appellate and Supreme Courts. The Criminal Law Program also assists district attorneys and conducts criminal investigations and prosecutions where local resources are inadequate.
- **Public Rights**—Provides legal services to all state agencies and constitutional officers and is organized in the following issue areas: Civil Rights and Enforcement; Charitable Trusts; Natural Resources; False Claims; Energy and Corporate Responsibility; Indian and Gaming Law; Environmental Law; Land Law; Consumer Law; Antitrust Law; and Tobacco Litigation Enforcement.
- **Law Enforcement**—Provides various services to local law enforcement and is organized into the following five elements: (1) the Bureau of Investigation conducts criminal investigations of statewide importance; (2) the Bureau of Narcotic Enforcement provides leadership, coordination, and support to law enforcement to combat the state's narcotic problem; (3) the Bureau of Forensic Services provides evaluation and analysis of physical crime evidence for state and local law enforcement; (4) the Western States Information Network provides an automated database of suspected criminal elements to law enforcement in neighboring states; and (5) the Criminal Intelligence Bureau shares criminal intelligence regarding organized crime, street gangs, and terrorist activity to other law enforcement agencies.
- **California Justice Information Systems**—Provides criminal justice information and identification services to law enforcement, regulatory agencies, and the public.
- **Gambling Control**—Regulates legal gambling activities and ensures that gambling on tribal lands is conducted in conformity with a gaming compact.
- **Firearms**—Provides oversight and regulation of firearms in California.



**Governor's Budget.** The Governor's budget proposal includes \$791 million to support DOJ in 2008-09. General Fund support for the department is about \$380.8 million, which is about \$36 million less than what is estimated for expenditure in the current year. The DOJ has a large increase in Directorate and Administration due to a proposed consolidation of various administrative functions that were previously budgeted in various other programs. The reduction in General Fund support is due to the Governor's across-the-board 10 percent reduction proposed for agencies supported by the General Fund.

<b>Summary of Expenditures</b>				
(dollars in thousands)	2007-08	2008-09	\$ Change	% Change
<b>Type of Expenditure</b>				
Directorate and Administration	\$30,570	\$96,117	\$65,547	214.4
<i>less distributed Administration</i>	<i>-30,570</i>	<i>-96,117</i>	<i>-65,547</i>	<i>0.0</i>
Legal Support and Tech Admin	54,036	0	-54,036	-100.0
<i>less distributed Legal and Tech</i>	<i>-54,036</i>	<i>0</i>	<i>54,036</i>	<i>0.0</i>
Executive Programs	16,469	0	-16,469	-100.0
Civil Law	146,992	149,321	2,329	1.6
Criminal Law	123,130	136,879	13,749	11.2
Public Rights	89,824	91,352	1,528	1.7
Law Enforcement	269,209	280,141	10,932	4.1
California Justice Information Services	189,276	175,257	-14,019	-7.4
Subtotal	\$834,900	\$832,950	-\$1,950	-0.2
Budget Reduction Proposals	0	-41,605	-41,605	0.0
Total	\$834,900	\$791,345	-\$43,555	-5.2

**Budget Balancing Reductions.** The Governor is proposing a 10 percent unallocated General Fund reduction to DOJ's budget. This would result in a reduction of \$41.6 million General Fund across all program areas. This would reduce DOJ expenditures to a level below estimated expenditures in the current year.

The Governor has proposed a few General Fund augmentations to DOJ's budget in 2008-09. Nevertheless, if the Governor's budget was adopted, DOJ would still realize a net reduction in General Fund expenditures of about \$36 million.

**Likely Impact of Reduction.** The LAO estimates that a reduction of this magnitude would likely impact DOJ's operations, which fall primarily into two categories: (1) legal representation of the state and its various departments, and (2) law enforcement. The LAO notes that reductions to DOJ's ability to provide legal representation may actually result in increased state costs since some state agencies may have to retain more costly private counsel instead of

retaining DOJ attorneys for legal representation. Therefore, the LAO estimates that any sizeable reduction to DOJ operations would be borne mainly by its law enforcement programs.

The LAO has put forward two options for reducing DOJ's budget that minimize the impacts on DOJ's ability to fulfill its mission of representing the state's legal interests and protecting public safety. These options include: (1) eliminating vacant positions, and (2) charging state and local agencies lab fees.

## 1. Eliminate Vacant Positions

**LAO Option – Eliminate Vacant Positions.** The LAO has identified that department-wide, DOJ, has a relatively high vacancy rate (15 percent). This vacancy rate translates to 860-plus vacant positions as of January 2008. Generally, the state budgets for a 5 percent vacancy rate, which assumes a normal level of delays in hiring and turnover.

The LAO has identified nine sections and bureaus within DOJ that have an average vacancy rate of 20 percent and represent almost 60 percent of the total vacancies in the entire department. The salary and benefits of these positions represent nearly \$32 million. The nine sections and bureaus with high vacancy rates are listed in the table below:

Section/Bureau	Vacant Positions	Total Authorized Positions	Vacancy Rate
Legal Secretaries (Executive Unit)	25.9	36.9	70%
Bureau of Medi-Cal Fraud and Elder Abuse	34.0	204.0	17%
California Bureau of Investigation	23.0	129.5	18%
Mission Support Branch	36.1	122.1	30%
Bureau of Narcotics Enforcement	114.3	411.8	28%
Bureau of Forensic Services	79.0	405.0	20%
Criminal Intelligence Bureau	53.0	166.1	32%
Hawkins Data Center Bureau	48.0	336.3	14%
Bureau of Criminal Identification and Information	94.5	708.0	13%
<b>Totals</b>	<b>507.8</b>	<b>2,519.7</b>	<b>20%</b>

The LAO recommends eliminating about 200 of the 500 positions identified in the nine sections and bureaus with high vacancy rates. Under the LAO's recommendation, there would be \$13.5 million in General Fund savings and each of the sections and bureaus would still be left with sufficient funds to support a higher than normal 10 percent vacancy rate.

**Staff Comments.** Staff finds that there are long standing recruitment and retention issues in various classifications at DOJ and many of these positions have likely been vacant for years. In 2007 the LAO reported that 41 percent of DOJ's criminalist positions at the central DNA laboratory in Richmond, California were vacant. Many of DOJ's positions are considered hard

to fill positions, which makes them exempt from current law that abolishes positions that have been vacant for six consecutive months.

Staff finds that in many cases there is a need for the services that would be provided if the vacant positions were filled. However, if the department fails to fill these positions year after year the increased level of service is never provided and the funds to support the positions continue to be budgeted. The LAO has found that its review on vacant positions that in many cases, departments have redirected vacancy savings to fund other department activities. This practice reduces legislative oversight over state expenditures.

The LAO has also recommended the following options for generally addressing departments with long standing vacant position problems: (1) regular examination of department vacancies during the budget process; (2) requesting audits of departments with vacancy problems, and (3) periodic zero-based budgeting for departments with vacancy problems.

Staff finds that the LAO's recommendation to eliminate some of DOJ's long-standing vacant positions is a reasonable plan for achieving short-term budget savings. However, it will be important for the Legislature to evaluate the services currently being provided by DOJ to determine if they are adequately meeting statutory mandates. If the current level of staffing is not sufficient to meet statutory mandates, additional positions may need to be restored in the future, provided the department is able to successfully recruit and retain qualified candidates for the positions.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve the LAO's recommendation to eliminate vacant positions and reduce DOJ's budget by \$13.5 million General Fund. (This reduction should be counted towards the across-the-board target set by the Governor.)
- Request staff, the LAO, DOF, and DOJ to work on a process for identifying positions for elimination and budget bill language to guide this process.

## 2. Charging State and Local Agencies Lab Fees

**Background.** The DOJ's Law Enforcement Section has a Bureau of Forensic Services that operates 11 full-service criminalistic laboratories throughout the state. These laboratories provide analysis of various types of physical evidence and controlled substances, as well as analysis of materials found at crime scenes.

While the DOJ labs provide some services to state agencies, they primarily serve local law enforcement agencies in jurisdictions without their own crime labs. These local agencies are found in 46 out of the 58 counties representing approximately 25 percent of the state's population. All of the major urban areas in California have their own crime labs or maintain contracts with other agencies for laboratory services.

The DOJ crime labs generally do not charge for the services they provide to state and local agencies, except for blood alcohol and some drug toxicology tests that have been paid for by local agencies since 1977.

**Governor's Budget.** The Governor's budget includes \$92 million to support DOJ's 11 criminalistic laboratories. The budget assumes that 70 percent of this budget will be supported by the General Fund (\$64 million).

The Governor's budget also includes \$646,000 one-time from the General Fund to support maintenance and repairs for the department's forensic laboratories.

**LAO Option – Charge State and Local Agencies Lab Fees.** The LAO recommends that the Legislature require state and local agencies to pay for the laboratory services provided them by DOJ. The LAO estimates that by charging local law enforcement agencies for lab services, the Legislature could reduce General Fund support for the state's criminalistic labs by approximately \$41 million due to (1) the creation of new revenue and (2) a reduction that is likely to result in the number of cases processed by the labs. The LAO finds that in 1992-93 when DOJ started charging the true cost of processing blood alcohol tests, the number of tests declined by 29 percent the next year. The LAO finds that many agencies started contracting with other providers who charged less than the state, thereby saving the state and the local agency money.

The LAO indicates that they have consistently made this recommendation because developing physical evidence through laboratory analysis is part of local law enforcement responsibility for investigating and prosecuting crimes. Therefore, the LAO finds that these expenditures should be borne by the counties and cities regardless of the state's fiscal condition. The LAO also points out that law enforcement agencies in 12 counties already do obtain laboratory services through the operation of their own laboratories or by relying on other agencies. The LAO also notes that the Federal Bureau of Investigation offers local law enforcement, free of charge, all forensic services in criminal matters, unless the request for assistance originates in a laboratory that could handle the matter itself.

The LAO has raised several implementation issues that will need to be addressed if the Legislature were to move toward a fee-based system for financing the state's criminalistic labs. These issues include the following:

- Fee structure should mitigate unusually high costs for complex investigations.
- Efforts should be made to ensure stable funding is provided to support the state's criminalistic labs.
- Fees for services should be commensurate with the costs to provide the service.
- The budgets for other state agencies that utilize DOJ's criminalistic labs should be adjusted to cover the cost of the new fee schedule.

**Staff Comments.** Staff finds that the LAO's option would minimize the public safety impacts of the Governor's proposed reduction to DOJ's budget. Given the magnitude of the proposed reduction it is likely that DOJ would have to reduce its lab efforts, which may increase the backlog of services it provides to local law enforcement and other state agencies. If an appropriate fee schedule was put in place the department would be able to maintain its lab services and may actually be able to enhance certain services.

Staff finds that DOJ currently does not have a base budget for operations and maintenance of its forensic facilities. Therefore, DOJ submits annual requests for relatively routine maintenance of its buildings.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Request that staff, LAO, DOF, and DOJ develop a plan for reducing the General Fund support for the state forensic labs, including raising fees for selected lab services.
- Approve the budget request to augment General Fund to support maintenance and repairs for the department's forensic laboratories and make \$225,000 ongoing to support routine maintenance related to fire, life, and safety.

### 3. Correctional Law: Class Action and Civil Lawsuits

**Background.** Currently, the Correctional Law Section within the Civil Division of DOJ performs two types of work for the California Department of Corrections and Rehabilitation (CDCR). First, they defend the state in state and federal correctional habeas corpus litigation and secondly, they defend the state in civil litigation and class action cases.

Civil suits against CDCR are brought by individual inmates or parolees seeking damages or injunctive relief for alleged violations of their civil rights.

Class actions are suits brought by large groups of inmates or parolees (often exceeding 10,000 class members) challenging conditions or policies affecting inmates or parolees. Class actions can often last decades, as once liability is determined the cases usually move into a post judgment of post settlement enforcement stage. Currently, there are 25 class action lawsuits filed against CDCR.

**Governor's Budget.** The Governor's budget proposal includes \$2.3 million from the General Fund to establish 13.1 positions (4 attorneys) to defend CDCR in various class action and civil lawsuits.

**Staff Comments.** Last year, the Legislature approved \$2.2 million from the General Fund (8 attorneys) to DOJ's efforts to defend the state in civil and class action cases. This augmentation increased the number of attorneys working on these cases by about 60 percent. DOJ currently is dedicating \$6 million to the defense of the state in the class action lawsuits. Staff has not been provided with information that suggests workload has increased significantly or is projected to increase with respect to the class action lawsuits that have been brought against the state.

Furthermore, staff finds that CDCR also has significant legal resources dedicated to defending the state in class action lawsuits.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Reject the budget proposal. (This reduction should be counted towards the across-the-board target set by the Governor.)

## 4. Correctional Law: Habeas Corpus Lawsuits

**Background.** Currently, the Correctional Law Section within the Civil Division of DOJ performs two types of work for the California Department of Corrections and Rehabilitation (CDCR). First, they defend the state in state and federal correctional habeas corpus litigation and second, they defend the state in civil litigation and class action cases. The habeas corpus litigation can be divided into three categories: (1) challenges to the denial of parole to inmates sentenced to life imprisonment; (2) matters relating to parole revocation such as timeliness of revocation hearings, sufficiency of evidence, or due process issues; and (3) other issues such as challenges to disciplinary hearings, sentence credit calculations, and conditions of confinement. Over half of the habeas corpus workload is related to “lifer” parole denials.

Federal habeas corpus cases have increased significantly in the last several years; in part, due to a significant increase in the number of parole hearings for life inmates held by the Board of Parole Hearings. Furthermore, inmates no longer need permission from the court before filing federal habeas corpus appeals per the federal court’s *Rosas* decision. This change is expected to lead to a large number of appeals of federal habeas corpus cases.

**Governor’s Budget.** The Governor’s budget proposal includes \$4.3 million from the General Fund to establish 26.2 positions (13 attorneys) to support a projected increase in federal habeas corpus workload.

**LAO Finds Increase Not Justified.** The LAO finds that workload data provided by the department do not support an augmentation of the level proposed in the budget. The LAO recommends that this budget proposal be reduced by \$1.8 million General Fund and 13 positions. Under the LAO’s recommendation, the department would still get 6.5 additional attorney positions.

**Staff Comments.** Last year, the Legislature approved \$3.4 million from the General Fund (12 attorneys) to support the increase in federal habeas corpus workload, which was a 60 percent increase to existing resources. The DOJ currently dedicates \$9 million to support this activity. The budget proposal would increase resources for the federal habeas corpus workload by another 50 percent. Staff recognizes that there has been some growth in the federal habeas corpus workload, but given the state’s fiscal conditions staff finds that the DOJ could do more to prioritize its workload within its existing resources.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Reject the budget proposal. (This reduction should be counted towards the across-the-board target set by the Governor.)

## 5. *Underwriters* Litigation – Stringfellow Toxic Waste Site

**Background.** Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) the state was found liable for the clean-up of the Stringfellow toxic dumpsite. An investigation by the DOJ revealed that between 1963 and 1978 the state’s activities involving the Stringfellow site were covered by three dozen insurance policies. In order to get some

coverage from these policies, the state sued five of its largest insurers (*Underwriters* lawsuit), which collectively provided 70 percent of the state's insurance coverage. In 2002, the state filed a related case (*Allstate* lawsuit) against its 26 remaining insurers which provided the remaining 30 percent of the state's insurance coverage. The *Underwriters* case has recovered more than \$121 million from various insurance providers.

**Governor's Budget.** The Governor's budget proposal includes \$2.9 million from the General Fund to continue funding specialist counsel with expertise in insurance coverage litigation and to support 2.6 positions to continue the *Underwriters* litigation.

***Underwriters* Litigation Continues.** Last year, the Legislature approved \$4.2 million General Fund to continue with a class action lawsuit against insurance companies referred to as the *Underwriters* litigation. This litigation is against insurance companies that reneged on insurance coverage held by the state on the Stringfellow hazardous waste dump, thereby leaving the state with significant outstanding costs to clean up this site. The DOJ has recovered more than \$120 million from insurance companies in this lawsuit thus far.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 6. Gang Suppression Enforcement Teams

**Background.** Four Gang Suppression Enforcement Teams (GSET) were created within the Bureau of Narcotics Enforcement at DOJ for a limited term in the 2006-07 Budget Act. The goal of these teams was to provide leadership to local law enforcement in suppressing multi-jurisdictional violent crimes by using innovative investigative techniques to disrupt gang criminal activities and dismantle their membership. The main focus of the GSET is to target the leadership and organizational structure of criminal street gangs.

The department submitted a report to the Legislature in January of this year that summarizes the work of the GSET to date. The report describes two cross-jurisdictional investigations that were centered in Stockton and Atwater. The department also describes their involvement in about 60 other cases that mainly seem to be direct assistance to local law enforcement with gang suppression efforts. The department has reported that because of their joint efforts 119 arrests have been made and 148 numerous charges have been filed on the persons arrested.

**Governor's Budget.** The Governor's budget includes \$5.3 million to permanently establish the four GSETs that were temporarily established in the 2006-07 Budget Act. These funds will support 33.6 positions at DOJ and external consulting contracts.

**Staff Comments.** Staff finds that the GSETs were successful in assisting in two cases that involved multiple jurisdictions. In these cases it does appear that DOJ did add value to investigations that were initiated locally. Otherwise, staff finds that the majority of GSET activities directly assisted local law enforcement in local gang suppression activities. Local law enforcement activities, such as gang suppression, are generally not the responsibility of the state.

Therefore, staff finds that the majority of the efforts by the GSETs would be more appropriately funded locally.

Staff finds that DOJ has significant law enforcement resources other than the GSET teams. The department has a significant narcotic enforcement branch that could increase its focus on gang intelligence efforts given the overlap of drug trafficking and street gangs.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Reject the budget proposal to extend the GSETs.

## 7. Restructure of Administrative Programs

**Background.** Three of DOJ's current divisions include the following:

- **Division of Administrative Support** – The mission of this division is to provide assistance and support services to the department's line programs.
- **Division of Legal Support and Technology** – The mission of this division is to provide law office management, legal document processing, research, information, electronic discovery, and litigation support.
- **Division of Executive Programs** – This program consolidates all other functions that are not directly related to the office's litigation or law enforcement responsibilities. The division is comprised of 12 units, including communications, legislative affairs, and program reviews and audits.

The DOJ reports that there are three programs within the Division of Executive Programs that are not administrative and that provide direct services or benefits to California citizens. These programs are:

- **Crime Violence Prevention Center** – This center initiates and promotes policies and programs that improve the quality of life for Californians through the prevention and reduction of crime and violence.
- **Office of Victim Services** – This office leads California's fight toward preserving the rights of crime victims through responsive programs, accessibility of services, and progressive legislation.
- **Office of Native American Affairs** – This office serves as liaison and addresses justice-related issues for California's Indian citizens who reside on reservations, rancherias, and in urban communities for the overall improvement of the quality of life for Indian people.

The DOJ reports that the Crime Violence Prevention Center and the Office of Victim Services have a combined budget of \$4.7 million and 40 positions. The Office of Native American Affairs is supported by \$326,000 and two positions.

**Governor's Budget.** The Governor's budget proposes to consolidate DOJ's administrative functions. This proposal would consolidate the existing Division of Administrative Support, the Division of Legal Support and Technology and the majority of the Division of Executive Programs into a single Administrative function. The proposal also would transfer the three non-



administrative programs from the Division of Executive Programs to the Criminal Law Division. The budget does not propose a fiscal impact related to this proposal.

**Staff Comments.** The DOJ does not report any direct savings related to this budget proposal, but the goal of the consolidation is to make better use of its administrative resources to support DOJ functions. Staff finds that some administrative savings may result from this consolidation.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve the budget proposal to consolidate administrative functions and transfer three programs that provide direct services to the Criminal Law Division.

## 8. Cardrooms – Compliance and Enforcement

**Background.** The Gambling Control Act establishes DOJ as the investigatory branch of the state's regulation of legal gambling. The Bureau of Gambling Control is responsible for investigations and inspections of gambling operations in the state. The Bureau is also responsible for conducting background checks on personnel and vendors associated with the gambling operations. The investigations done by the Bureau are the basis for suitability determinations and administrative actions by the Gambling Control Commission.

**Governor's Budget.** The Governor's budget proposes \$1.7 million from the Gambling Control Fund to support 11 permanent positions to address increased compliance and enforcement workload in the State's 91 cardrooms. The DOJ reports that this augmentation will provide four additional agents for investigations, four additional agents for compliance investigations, and three agents to conduct additional background investigations.

**Staff Comments.** Staff finds that the popularity of card games like Texas Hold'em and others have increased significantly and nearly doubled gross annually gaming revenues from cardrooms over the past decade. The DOJ indicates that the Bureau's investigatory resources have not been able to keep up with this growth and they now have a backlog of 145 cases related to the state's cardrooms.

Staff finds that the Gambling Control Fund is very close to having a structural deficit. Furthermore, staff finds that recent legislation (Chapter 438, Statutes of 2007 [SB 730, Florez]) changed license renewal fees to a bi-annual process. It is unclear what impact this change will have on revenues to the Gambling Control Fund in the budget year.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Reject the proposed expansion until revenue impacts of recent legislation on the Gambling Control Fund are determined.

## 9. Greenhouse Gas Emissions Reduction Litigation

**Background.** The department is currently defending the state's adoption of legislation (AB 1493, Pavley), in 2002, that requires the Air Resources Board (ARB) to adopt regulations to

achieve a reduction of greenhouse gas emissions from vehicles manufactured in model year 2009 and later. The DOJ is also working on other litigation and projected litigation related to other regulations adopted by ARB.

**Governor's Budget.** The Governor's budget proposes \$1.9 million from the Legal Services Revolving Fund to support 9.8 permanent positions (4 attorney positions) to respond to increased litigation workload required by DOJ's client/agency the Air Resources Board. This request includes \$500,000 for external consultant funding for experts.

The ARB has a corresponding budget proposal to fund these litigation expenses with \$1.9 million from the Motor Vehicle Account.

**Staff Comments.** The DOJ indicates that the increase in litigation expenses is mainly due to the industry plaintiffs' choice to pursue a factual challenge as a separate basis for their litigation. In the past, lawsuits filed against the ARB have mainly contested ARB's legal authority for a particular regulation and have not challenged facts of the case. The DOJ indicates that this fundamental shift to litigation that is based on factual challenges has increased the complexity of the cases and requires specialized expertise that has increased the costs of the litigation.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve the budget proposal.

## 10. Bureau of Firearms

**Background.** The Bureau of Firearms provides oversight, enforcement and regulation of firearms in California by conducting firearms eligibility reviews, administering (1) the handgun safety certificate program, (2) a centralized list of firearms dealers, and (3) the gun show producer and assault weapon registration programs, conducting firearms dealer and manufacturer inspections and investigating violations. The Bureau also conducts investigations on armed and prohibited persons, in accordance with state and federal law, and administers the armed and prohibited persons database and the state handgun and firearms safety device programs.

The Bureau also maintains the Automated Firearms System (AFS). The AFS was developed by DOJ in the 1970s to house records containing handgun information, as required by Penal Code section 11106. There are two types of handgun records within the database: law enforcement records, which contain a description of a handgun and its status (e.g., lost, stolen, etc.) and historical records that contain information on handguns and the individuals who are recorded as having possession of them. The AFS is linked directly to a corollary gun file in the FBI National Crime Information Center (NCIC). Over the years the AFS has become neglected as DOJ became more reliant on the Bureau of Alcohol, Tobacco, and Firearms, and Explosives (ATF) gun tracing capabilities.

In 2003, Congress enacted a rider to the ATF's annual funding bill that limited the ATF's ability to share gun tracing data with state and local law enforcement entities. Due to this amendment, the ATF can only release firearms trace data to a law enforcement agency "solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such

information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure.” Strictly construed, the amendment eliminates law enforcement’s ability to obtain cross-jurisdictional information, even when law enforcement investigations overlap because of common purchase patterns. In plain terms, this means that a law enforcement agency in one county cannot investigate gun trafficking patterns to determine whether guns are coming from a dealer in a nearby jurisdiction.

California cannot currently utilize the information stored in the AFS because its functionality is limited. The system acts as a repository of information, not as a searchable database. As a result, the DOJ can inquire into individual firearms, but cannot search for information involving particular firearms sales, firearms dealers, or compile regional information dealing with firearms trafficking patterns.

The 2007-08 Budget Act contained \$541,000 from the Dealers’ Record of Sale (DROS) special fund to modernize the AFS database and required that DOJ have an approved Feasibility Study Report from the Department of Finance before expending the funds allocated for the upgrade to the AFS.

**Governor’s Budget.** The Governor’s budget requests \$1.3 million one-time from the DROS Account to augment the support for a multi-year effort to redesign the AFS. The DOJ indicates that this project is included in an approved Special Project Report that is part of the California Justice Information Systems (CJIS) redesign project that is currently ongoing.

The Governor’s budget also proposes \$266,000 (\$235,000 ongoing) from the Dealers’ Record of Sale (DROS) Account to support three new positions to address workload increases related to the following three activities:

- Firearms eligibility reviews for peace officers, security guards, carry concealed weapon applicants, and dangerous weapon licensees;
- Firearms prohibition reporting; and
- Database updates/maintenance and timely dissemination of firearms information used by law enforcement agencies for criminal investigations and prosecutions.

**Staff Comments.** Staff finds that local law enforcement’s ability to trace crime guns is seriously limited because the functionality of the AFS is limited. Staff finds that tracing crime guns could help solve crimes and improve public safety.

Furthermore, staff finds that the DROS Fund currently has a structural deficit of approximately \$1.3 million and cannot sustain the current level of expenditures on an ongoing basis. Staff notes that the majority of the expenditures proposed in the budget are one-time. The DROS fund is projected to end the year with a reserve of \$5 million, which is adequate to cover the one-time costs to upgrade this system.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve the budget proposal to upgrade the AFS database.
- Reject the budget proposal to provide support staff for the Bureau of Firearms.

## 11. National Criminal History Improvement Program

**Background.** The DOJ is responsible for the compilation and dissemination of criminal history information submitted by various local agencies. The DOJ has received federal grants under the National Criminal History Improvement Program since the inception of the program in 1995. These monies have helped DOJ to improve the completeness, accuracy, and accessibility of the state's criminal history records.

**Governor's Budget.** The Governor's budget proposes \$550,000 in federal funds to support additional efforts to improve the completeness, accuracy, and accessibility of the state's criminal history records consistent with the National Criminal History Improvement Program. These funds will be used to support the following activities:

- Adding thumbprints to dispositions in two additional counties that are already submitting disposition data to DOJ electronically.
- Enabling two additional courts to report dispositions to DOJ electronically.
- Migrating existing data from the federal Global Justice Extensible Markup Language Data Model infrastructure to the newly adopted National Information Exchange Model.

**Staff Comments.** Staff finds that the project to migrate data from the Global Justice Extensible Markup Language to the National Information Exchange Model requires an approved Feasibility Study Report. Staff has been informed that a Feasibility Study Report has been approved for this project.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve this budget proposal.

## 12. Sexual Habitual Offender Program Fund

**Background.** The Sexual Habitual Offender Program (SHOP) Fund is supported by fees received from various agencies requesting criminal history information regarding an application for employment or licensing and court-ordered fines levied on persons convicted of certain sexual offender offenses.

This fund primarily supports components of the Criminal Justice Information System (CJIS). The department indicates that these monies are used to support an assessment of CDCR records to determine if a paroling inmate is a Sexual Habitual Offender. If they are a Sexual Habitual Offender the DOJ profiles the offender using CDCR data and provides it to local law enforcement.

The fund also supports DNA databank functions related to quality assurance, verifications, and documentation of DNA hits in the DOJ's Cal-DNA database. The department indicates that these functions are distinct from the Proposition 69 functions, which involve receiving and logging new DNA samples. The department indicates that 70 percent of the DNA databank hits have been for sex crimes.

**Governor's Budget.** The Governor's budget proposes a reduction of \$642,000 in spending authority from the SHOP Fund. This reduction is made possible by placing some important information regarding training and the provision of goods and services that is needed by client agencies on various DOJ web sites and eliminating staff time providing the information.

**Staff Comments.** Staff finds that this reduction will enable the SHOP fund to remain solvent in future years without having to reduce CJIS program efforts.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve the budget proposal to reduce expenditures from the SHOP Fund.

### 13. Fingerprint Fees Account

**Background.** The DOJ is currently implementing the DNA Live Scan Automation Project that allows local agencies to electronically submit offender information and thumbprints to DOJ databases. The implementation of the DNA Live Scan system is eliminating the need for hard fingerprint cards and has improved the efficiency of getting and storing fingerprint information.

**Governor's Budget.** The Governor's budget proposes a \$4 million reduction in expenditure authority from the Fingerprint Fees Account as a result of reduced user fees set by the FBI for fingerprint-based criminal history information checks and improved efficiency by transitioning to an electronic system.

**Staff Comments.** Staff finds that the transition from hard fingerprint cards to electronic Live Scan has increased the efficiency of getting and storing fingerprint information. Therefore, the FBI recently proposed to lower the fees for fingerprint-based criminal history information checks.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Approve the budget proposal to reduce expenditure authority from the Fingerprint Fees Account.

### 14. False Claims Act Fund

**Background.** One of the duties of the Attorney General is to diligently investigate entities or persons that file false claims against the state. A claim includes any request or demand for money, property, or services made to any employee, officer, or agent of the state.

Proceeds from litigation are deposited in the False Claims Act Fund to support DOJ's investigation activities.

**Governor's Budget.** The Governor's budget proposes a \$3 million reduction in expenditure authority from the False Claims Act Fund. This action will reduce external consulting contracts and is needed to keep the fund solvent.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Approve the budget proposal to reduce expenditure authority from the False Claims Act Fund.

## 15. Reimbursement Adjustments

**Background.** The DOJ gets grant funds and contract funds from various other state agencies through reimbursement. These grants and contracts support a wide variety of activities.

**Governor's Budget.** The Governor's budget proposes technical adjustments to the DOJ's projected reimbursement authority in the budget year. The DOJ requests a permanent reduction in reimbursement authority of \$4.2 million to account for fewer grant and contract funds in the budget year related to the following items:

- \$2 million associated with the federal Criminal Justice Information System (CJIS) Byrne Grant program that provides funding to upgrade and establish better data sharing and management of criminal history data.
- \$1.7 million associated with the CJIS Statewide Integrated Narcotic System Enhancements program that coordinates narcotics related law enforcement operations.
- \$500,000 related to various expiring CJIS Memorandums of Understanding.
- \$20,000 associated with a technical transfer of how services are reimbursed in the Child Support Enforcement Unit.

The Governor's budget also proposes an augmentation to its reimbursements of \$430,000 to reflect a contract with the California Department of Corrections and Rehabilitation to screen out-of-state convictions of California inmates and parolees to determine if they should be included in the Jessica's Law database for sex offenders.

These two items result in a net reduction in reimbursements of \$3.8 million.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Approve the adjustments to DOJ's reimbursements.

## 16. Anti-Gang Violence Parenting Curriculum

**Background.** Legislation enacted in 2007 (Chapter 457, Statutes of 2007 [AB 1291, Mendoza]) requires the DOJ to develop curriculum for anti-gang violence parenting classes. This legislation would allow the court to order the parent of a minor found guilty of commission of a gang-related offense to attend anti-gang violence parenting classes.

**Governor's Budget.** The Governor's budget proposes \$102,000 General Fund to support the development of curriculum directed by recent legislation.

**Staff Comments.** Staff finds that the DOJ currently has \$4.7 million to support the Crime Violence Prevention Center. Staff finds that DOJ should be able to absorb the one-time costs of developing this curriculum within existing resources.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Reject funding to support this effort and request that DOJ fund this one-time effort from within existing resources.

## 17. Energy Litigation

**Background.** The Attorney General created an Energy Task Force in January 2001 to investigate and litigate issues arising from the 2000-2001 electricity and natural gas crisis in California. The department continues to be engaged in numerous lawsuits and settlements related to the activities during the electricity and natural gas crisis. So far, the Attorney General and other state agencies have recovered over \$5 billion in losses and damages related to the crisis.

**Governor's Budget.** The Governor's budget includes base funding of \$6 million from the Ratepayer Relief Fund to support 33 positions (15 attorneys) and \$1.5 million in expert contracts to continue with numerous pieces of litigation related to the California energy crisis.

**Williams Energy Settlement.** Early on in the aftermath of the California energy crisis the DOJ settled a lawsuit with the Williams Energy Company. The terms of this settlement included the allocation of some cash funds (about \$69 million) to a new Alternative Energy Retrofit Account to be used to retrofit school and other public buildings with renewable energy and energy efficiency projects. After this initial settlement the Legislature enacted legislation that would direct future settlement monies to the Ratepayer Relief Account that is used to finance the energy litigation and investigations, reduce rates to ratepayers, and pay off the energy bonds issued during the energy crisis.

The DOJ has indicated to staff that \$75 million is currently being held in the department's Litigation Deposit Fund as a result of the Williams Energy Settlement. This includes the settlement payments plus interest on the deposit.

Staff finds there are no statutory restrictions on how the state uses this money and thereby could be transferred to the General Fund. Nevertheless, staff notes that customers of the state's three large investor-owned utilities are the ones that paid the entire bill for the electricity crisis. Therefore, it would be appropriate that settlements received by the state benefit the ratepayers of the investor-owned utilities.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.

## 18. Hazardous Waste Litigation

**Background.** Over the past decade, the DOJ has handled some of the Department of Toxic Substances Control's (DTSC) hazardous waste enforcement work under the Hazardous Waste Control Act and its hazardous waste site cleanup work under the Hazardous Substances Account

Act and CERCLA. In each year, the DOJ has recovered and returned to DTSC far in excess of the funds that support DOJ's enforcement work.

The DOJ indicates that it has also used its funds to work directly with District Attorneys, local health departments, and other agencies in handling toxics cases, including criminal enforcement. The funding has also supported training efforts, investigations, and multi-jurisdictional cases worth millions of dollars.

Historically, the DOJ was allocated \$4.3 million from the Hazardous Waste Control Account (HWCA) and the Toxic Substances Control Account (TSCA) to support the activities listed above. The Governor vetoed \$2.1 million from the base budget appropriation provided in the 2007-08 Budget Act. The Governor's veto indicated that he wanted to switch support for DOJ's legal efforts from a direct appropriation to a client-agency relationship with DTSC. Under this scenario, DTSC would determine the level of services provided by DOJ in any given year. The DOJ has indicated that at the current-year funding level of \$2.2 million it would have to reduce its efforts considerably.

**Governor's Budget.** The Governor's budget proposes to delete all direct appropriations from the HWCA and the TSCA in the budget year. There is a separate budget proposal for DTSC to contract with DOJ for hazardous waste enforcement work at the same level (\$2.2 million) budgeted in the current year.

**Staff Comments.** Staff notes that the Governor's veto in 2007 was unexpected by DOJ and lack of communication resulted in DOJ not reducing its expenditures in the current year to accommodate for the reduced level of funding. The DOJ reports that it is currently working on an interagency agreement with DTSC to cover costs for the next several months. The DOJ does not believe the interagency agreement will fully address the shortfall in the current year and they have indicated that they may request a subsequent augmentation.

Staff finds that DOJ should have taken more efforts to reduce its expenditures in the current year to live within the appropriation provided.

Staff finds that DTSC is the lead department for the administration responsible for hazardous waste enforcement and hazardous waste site clean up. As such, staff finds that the DTSC should have some authority over how its funds are expended to help meet its goals. Ultimately, the work DOJ performs is, and will continue to be, one of the ways DTSC meets its goals.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.



## 8180 Payments to Counties for Cost of Homicide Trials

**Background.** This local subvention item was added to the budget so that the cost of homicide trials not unduly impact local government finances. Current law allows counties to apply to the State Controller for reimbursement of homicide trial and hearing costs that exceed the amount of money derived by the county from a tax of 0.0125 of 1 percent of assessed property value in the county.

**Governors Budget.** The Governor's Budget proposes \$2.25 million from the General Fund to support this item in the budget year. This is \$250,000 or 10 percent less than what was included in the budget for 2007-08.

**Staff Comments.** Staff finds that actual expenditures from this item have been considerably less than what has been budgeted. The historical expenditures from this budget item are listed in the figure below:

**Figure 1: Reimbursement to Counties for Homicide Trials, (Dollars in Thousands)**

<b>Budget Year</b>	<b>Amount Budgeted</b>	<b>Actual Expenditures</b>	<b>Amount Reverted to the General Fund</b>
2001-02	\$7,500	\$7,500	\$0
2002-03	7,500	5,617	1,883
2003-04	5,000	1,484	3,516
2004-05	4,746	3,062	1,684
2005-06	4,305	1,797	2,508
2006-07	3,500	616	2,884

To date only \$4,000 of the \$2.5 million allocated in the 2007-08 Budget Act has been expended.

Staff finds that statute governing these reimbursements was amended in 2004 to exclude costs paid by the trial courts. This change was made when the trial courts were consolidated and the primary financial support for the trial courts was transferred from the counties to the state. Since that time reimbursements to counties have declined.

Now that we have a state system of trial courts it is more likely that the courts would work to solve problems related to a resource-intensive trial. For example, the courts are currently allocating additional judicial resources to the trial court in Riverside to address a backlog of criminal cases. It is likely the state system of trial courts will do something similar to address a high-profile resource-intensive trial.

Furthermore, staff notes that demand for these funds has been significantly reduced over the past few years.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Eliminate funding for this item.

## Control Section 5.25

**Background.** Control Section 5.25 governs payment of attorneys' fees arising from actions in state courts against the state, its officers, and its employees.

**Governors Budget.** The Governor's budget proposes no changes to this Control Section.

**Staff Recommendation.** Staff recommends that the Subcommittee approve as budgeted this Control Section.

## Control Section 24.10

**Background.** Control Section 24.10 directs the allocation of penalties deposited in the Driver Training Penalty Assessment Fund. The Control Section allocates the first \$1.6 million to the Department of Education. After that, the remaining funds are allocated in the following order:

1. \$4.1 million to the Victim-Witness Assistance Fund;
2. \$9.8 million to the Corrections Training Fund;
3. \$14 million to the Peace Officers' Training Fund; and
4. The remainder is allocated to the General Fund.

**Governors Budget.** The Governor's budget proposes no changes to this Control Section.

**Staff Comments.** Changes to this control section are discussed in the budget for the Commission on Peace Officers' Standards and Training.

**Staff Recommendation.** Staff recommends that the Subcommittee amend this Control Section to conform to the action taken in the budget for the Commission on Peace Officers' Standards and Training.